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In the Supreme Court of the United States

No. 768

OCTOBER TERM, 1961.

LOCAL UNION 760; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

Petitioner,

vs.

DR. J. W. PRESLEY, FRED CHANIOTT, GORDON POWELL, CLARENCE E. FARRIS and MORRIS GOLDSTEIN, Composing the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals For the Sixth Circuit.

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To the Honorable Chief Justice and Associated Justices of the Supreme Court of the United States:

Petitioner, Local Union 760, International Brotherhood of Electrical Workers, prays for the issuance of Writ of Certiorari to review the judgment of the Court of Appeals for the Sixth Circuit, affirming the judgment of the District Court for the Eastern District of Tennessee, Southern Division.

OPINIONS BELOW.

The memorandum opinion of the District Court for the Eastern District of Tennessee, Northern Division is set out in the Record, page 5a. The Order Sustaining Motion to Dismiss of the District Court for the Eastern District of

Tennessee, Northern Division is set out in the Record, page 8a. (Nine extra copies of the appendix Record below are filed herewith.)

Order of the Circuit Court of Appeals is set out in the appendix hereto, at page 12.

JURISDICTION OF THIS COURT.

The order and judgment of the Circuit Court of Appeals is dated December 5, 1961. The petitioner here filed its Bill of Declaratory Judgment in the United States District Court on May 10, 1960.

The jurisdiction of this Court is based on the laws of the United States as set forth in 16 U. S. C. A. 831.

This is an action for a Declaratory Judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining a question of actual controversy between the parties.

QUESTIONS PRESENTED.

1. Does a United States District Court have jurisdiction based on the law of the United States as set forth in 16 U. S. C. A. 831, in an action for a declaratory judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining an actual controversy between the parties?

2. Is a public electric plant, which becomes a part of the TVA system, and purchases or obtains TVA power by contract, and thus becomes a distributor of TVA electrical energy, bound to pay its "laborers or mechanics" no less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity in the construction, alteration, maintenance or repair of building dams, locks or other projects as provided for by 16 U. S. C. A. 831?

STATUTE INVOLVED.

The relevant portions of 16 U. S. C. A., Section 831(b). are as follows;

> "All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks and other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics."
>
> * * *
>
> "Where such work as is described in the two preceding paragraphs is done directly by the Corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract."

STATEMENT OF FACTS.

This Bill For Declaratory Judgment (R. 2a) among other things alleges:

That the jurisdiction of this Court is based on the laws of the United States as set forth in 16 U. S. C. A. 831.

That this is an action for a Declaratory Judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

That the Congress of the United States, by the enactment of 16 U. S. C. A. 831, created and established the Tennessee Valley Authority, hereinafter referred to as the TVA, and, among other things, provided for a system for the distribution of electrical power. 16 U. S. C. A. 831 (b), among other things, provides,

> "all contracts to which the Corporation (TVA) is a party and which require the employment of laborers and mechanics in the construction, alteration, mainte-

nance, or repair of buildings, dams, locks or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics."

Thereafter in order to become a part of the TVA system, that is, in order to purchase or obtain TVA power and thus become a distributor, the City of LaFollette purchased certain then existing electrical facilities owned and then being operated by the Commonwealth and Southern Corporation. Following this purchase the City of LaFollette, by ordinance, authorized by "The Municipal Electric Plant Act," now found at TCA Sec. 6-1505 et seq., created the defendant, Board of Public Utilities.

That all acts of the City of LaFollette as set forth in paragraph four thereof and/or the Board are inextricably interwoven with the acts of the United States Congress as set forth in 16 U. S. C. A. 831 so as to form the TVA system.

Thereafter the TVA and the Board entered into a contract in conformity with 16 U. S. C. A. 831 whereby the Board became a unit in the TVA system necessitating the employment of a large number of laborers and mechanics within the meaning of 16 U. S. C. A. 831b as set forth in the third paragraph hereof.

That the Board employs a large number of laborers, mechanics and otherwise who are members of the plaintiff labor union. That the Board is not now, nor has it ever, complied with 16 U. S. C. A. 831b as set forth in the third paragraph hereof, and the Board refuses to discuss with the plaintiff the applicability of or compliance with 16 U. S. C. A. 831.

Thereafter in accordance with Rule 12 of the Federal Rules of Civil Procedure, the defendants filed a Motion to

Dismiss (R. 4a). This Motion was, by the Court, granted, a Memorandum Opinion, and an Order pursuant thereto duly entered (R. 5a, 8a). The Court's Memo Opinion, among other things stated:

> "* * * that it did not have jurisdiction of the case.
>
> * * *
>
> Obviously, 831(b) relates only to government contracts for construction, maintenance, etc., on TVA properties, which contracts necessarily involve the employment of laborers and mechanics. The Utility Board undoubtedly did need laborers and mechanics to obtain its system for the distribution of power purchased from TVA. But the responsibility for maintaining its own system is one thing: and a contract with a government agency for maintenance of a government property is something else. * * *"

This appeal was, thereafter, duly perfected.

REASONS FOR GRANTING THE WRIT.

Your petitioner assigns the following reasons for granting the writ:

1. 16 U. S. C. A. 831b has not been construed insofar as we have been able to find, except by the Trial Court and the Court of Appeals in this cause.

2. The respondents are effectively neutralizing the intent of Congress, they are using discriminatory practices and they are paying their laborers and mechanics substandard wages in violation of 16 U. S. C. A. 831b.

It has been held that TVA has the right and is authorized by the TVA Act to set the resale rates and obligate, by contract, municipalities and others to dispose of revenues from an electric system in accordance with the provisions thereof, and that this is the uniform practice. *TVA v. Lenoir City*, 72 Fed. Supp. 457.

We submit that TVA cannot set a fair, reasonable and just rate for electric energy to the consumer without taking into consideration the cost of labor. Therefore, we say that TVA is assuming that these respondents are paying the prevailing rate of wages when it sets the rate to be charged the ultimate consumer of the electric energy. We further submit that Congress did not intend that these distributors would make a return like a Commonwealth Edison Company or Sam Insull Company—the very evil which helped to bring TVA into existence.

It is undisputed that:

1. The TVA and the respondents entered into a contract in conformity with 16 U. S. C. A. 831b whereby the Board became a unit in the TVA system.

2. That the respondents engage in the construction, alteration, maintenance or repair of buildings, dams, locks or other projects as set out in 16 U. S. C. A. 831b.

3. That the respondents employ large numbers of laborers and mechanics within the means of 16 U. S. C. A. 831b.

The question is whether this activity on the part of the respondents comes within the meaning of 16 U. S. C. A. 831b or as the learned Trial Judge reasoned from reading 16 U. S. C. A. 831b, that it obviously relates only to government contracts for construction, maintenance, etc., on TVA properties.

The plain meaning of the words of this statute clearly brings the petitioner within its purview, as it reads as follows:

> "All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks and other

projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics."

To resolve this, one must look to the intent of Congress' judicial interpretations of it or similar provisions and the degree of executive enforcement. It may be well to note that the president of the United States just recently set up a new executive committee packed with enforcement sanctions to bar racial discrimination in government by private firms doing business with the government. Furthermore, there is no case or judicial opinion which spells out a contrary or different interpretation than that propounded by the petitioner.

From all of this, it would appear a proper construction of 16 U. S. C. A. 831b to be directly concerned with the wide-spread existence of sub-standard wages, hours, working conditions and discriminations. Congress clearly intended, by this legislation, to raise living standards and to eliminate the payment of wages to labor which are less than "prevailing rate of wages for work of a similar nature prevailing in the vicinity," by the passage of this Act.

When Congress sought to unshackle that great giant, at Muscle Shoals to revolutionize the power problem, to permit the humblest family to avail itself of electricity at a reasonable rate, and to raise the Tennessee Valley by its boot straps, it had labor in its mind, in its heart and on its lips. Excerpts are taken from the Congressional record of April and May 1933, as follows:

Congressman Taylor at page 2199:

"I say unto you that with this great development East Tennessee will not only be the Ruhr of the United States but it will also be the Eden of America."

Congressman Mitchell at page 2253:

"No longer will the men without a job be walking the highway in search of work. He can and will get employment and become again self sustaining. The purchasing power of the people will be restored and the normal prosperity once again reign."

Congressman Britton at page 2266 speaks of "harnessing the Tennessee River" and "put it to use for the benefit of humanity."

Congressman Snyder at page 2273:

"I am for this bill because I see in it much relief for the farmer, the laborer and the little business man."

In addition to all of the above it is set out in the bill for Declaratory Judgment that all acts of the City of LaFollette and/or the Board are inextricably interwoven with the acts of the United States Congress as set forth in 16 U. S. C. A. 831 so as to form the TVA system. To substantiate this it must be noted that the respondents can only purchase power from the TVA, and that in so doing it is common knowledge that they must and do agree, and this provision is contained in every power contract concerning use of lines for transmission purposes as follows:

"TVA is hereby granted the privilege of using any electric line of the Municipality * * * for the purpose of transmitting electric energy betewen adjoining portions of TVA's facilities or to other customers of TVA."

This can only mean that the electric energy in the respondents transmission lines are also flowing into the circuits of their customers in their service area as well as other facilities and customers of the TVA. The respondents' service area encompasses certainly more than the City of LaFollette and undoubtedly extends into adjoining

counties. Some service areas of Municipalities even extending beyond state boundaries.[1]

We say that the respondent board owes a duty to the whole of the service area in which it operates not just to the City of LaFollette. In our judgment it is not fair, and is unlawful, for the respondents to pay sub-standard wages which result in high returns to the benefit of the City of LaFollette only, not to its service area.

The cardinal principle of statutory construction is to save and not destroy. *U. S. v. Menasche*, 75 S. Ct. 513, 348 U. S. 528; 99 L. Ed. 615. The Court should construe law in harmony with legislative intent and seek to carry out the legislative program. *Anderson v. U. S. Civil Service Commission*, 119 F. Supp. 567.

In its second paragraph U. S. C. A. 831(b) sets out that "All contracts to which the Corporation is a party" shall provide for the payment of the prevailing rate of wages, this section cannot be held to mean all contracts except contracts entered into between the Corporation and the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee. Had Congress so intended such an exclusion, it would have stated the exclusion in express language. Of course, it is undisputed that the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee, obtains electrical power by con-

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[1] In the hearing before a subcommittee of the committee on public works U. S. Senate 84th Congress, first session on S. 2373 on July 21, 22 and 27, 1955, at page 162 Mr. S. R. Finley, General Supervisor of the Electric Power Board of Chattanooga, stated "our Electric Power Board of Chattanooga, is the largest distributor of TVA produced power. We serve an area of some 500 square miles part of which is in the State of Georgia, and which there are some 240,000 people. About ½ of our 75,000 customers are within the City of Chattanooga and ½ outside of it. Some 5,000 customers are in the State of Georgia closely adjacent to Chattanooga."

tract from the Tennessee Valley Authority. Therefore, the defendants' contract with the Tennessee Valley Authority comes squarely within the provisions of 16 U. S. C. A. 831(b). The respondents who comprise the Board of Public Utilities of the City of LaFollette, Campbell County, Tennessee are obligated and directed by an Act of Congress, 16 U. S. C. A. 831(b), to pay their employees in the construction, alteration or repair of buildings, utility lines and otherwise, used in their operations, the prevailing rate of wages for work of a similar nature prevailing in the vicinity. This they failed to do and because of this failure they are subject under the provisions of 16 U. S. C. A. 831(b). This is an action for a Declaratory Judgment pursuant to 28 U. S. C. A. 2201 for the purpose of determining a question of actual controversy between the parties.

The purpose of a declaratory procedure is to remove uncertainty from legal relations and to clarify, quiet and stabilize them before irretrievable acts have been undertaken, and also to enable an issue of questioned status or fact, on which a whole complex of rights may depend, to be expeditiously determined. *Delaney v. Carter Oil Company*, C. A. Okl. 1949, 147 F. 2d 314, cert. den. 70 S. Ct. 71, 338 U. S. 824, 94 L. Ed.—.

Certainly there can be no justificable controversy where the persons suing have suffered no legal detriment, however, when as in this case an Act of Congress gives the plaintiff a right and when that right is violated there arises a cause of action. The plaintiff's claim is not moot, hypothetical or abstract but rather a substantial one which could easily be reduced to a monetary sum by the application of simple mathematics.

CONCLUSION.

Wherefore, for the reasons set forth above it is respectfully submitted that this Petition for Writ of Certiorari should be granted and that the opinions and judgments of the Circuit Court of Appeals and the District Court should be reversed and this cause ordered remanded to the District Court, with directions to reinstate the cause upon the docket and let the defendant answer, and the cause tried upon the merits as sought by the original complaint.

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Of Counsel.

APPENDIX.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(December 5, 1961.)

Before WEICK and O'SULLIVAN, Circuit Judges, and DARR, Senior U. S. District Judge.

THE ABOVE CAUSE having come on to be heard upon the record, the briefs of the parties, and arguments of counsel, and on due consideration thereof, and upon consideration of the memorandum of the District Judge who granted the defendants' motion to dismiss the above cause,

IT IS ORDERED AND ADJUDGED that the judgment and order of the District Court dismissing the above cause be, and it is, hereby affirmed.

Approved for entry,

CLIFFORD O'SULLIVAN,

United States Circuit Judge.